

STATE OF INDIANA)	IN THE ALLEN CIRCUIT COURT
) SS:	
COUNTY OF ALLEN)	CAUSE NO.

DAVID M. ALLEN DDS &)
ASSOCIATES, LLC d/b/a)
AFDENT,)
)
Plaintiff,)
)
v.)
)
BRIAN C. NORDAN, and)
DUSTIN D. COLEMAN,)
)
Defendants.)

VERIFIED COMPLAINT FOR DAMAGES

COMES NOW, Plaintiff, David M. Allen DDS & Associates, LLC d/b/a Afdent, by counsel, the law firm of Burt, Blee, Dixon, Sutton & Bloom, LLP and for its Complaint against Brian C. Nordan and Dustin D. Coleman, hereby states as follows:

PARTIES

1. David M. Allen DDS & Associates, LLC (hereinafter "Afdent") is a Limited Liability Company organized under the laws of the State of Indiana doing business as Afdent, with its principal office located at 4041 Parnell Avenue, Fort Wayne, Allen County, Indiana.

2. Brian C. Nordan (hereinafter “Nordan”) is, based on information and belief, a competent individual over the age of 18 with a residential address of 18423 Tonkel Road Auburn, Indiana, Allen County.

3. Dustin D. Coleman (hereinafter “Coleman”) is, based on information and belief, a competent individual over the age of 18 with a residential address of 18423 Tonkel Road Auburn, Indiana, Allen County.

JURISDICTION

4. This Court has jurisdiction over the matters and the parties hereto.

5. Venue is proper in this Court pursuant to the Indiana Rules of Trial Procedure, Trial Rule 75.

6. Venue is preferred in this Court pursuant to Indiana Rules of Trial Procedure, Trial Rule 75(A).

FACTS COMMON TO ALL COUNTS

7. Afdent is a dental office in Fort Wayne, Indiana that provides dental services to its clients and/or patients.

8. On or about March 16, 2006 Afdent hired Nordan as its Chief Marketing Officer and General Manager.

9. Nordan's employment was governed pursuant to a series of Employment Agreements. (Employment Agreements are attached hereto as Exhibits A, B, and C respectively.)

10. Nordan was terminated "for cause" in accordance with the terms and conditions of his Employment Agreement on June 2, 2018.

11. As General Manager, Nordan owed a fiduciary duty to Afdent.

12. Through the nature of his employment, Nordan had access to Afdent's financials and had the duty to manage Afdent's financial affairs.

13. Additionally, Nordan had the authority and duty to hire individuals to assist in the day-to-day business activities of Afdent.

14. During the course of his employment, Nordan retained his husband, Coleman on Afdent's payroll with full benefits on or about June 12, 2014.

15. During the course of his employment, Nordan retained his sister, Angela Jasinski (hereinafter "Jasinski"), on Afdent's payroll following her separation with full benefits on or about September 8, 2010.

16. Coleman was paid Fifty Two Thousand Dollars (\$52,000.00) per year plus health insurance and 401(k) benefits.

17. Jasinski was paid at a rate of Twenty Six Thousand Dollars (\$26,000.00) per year, plus health insurance and 401(k) benefits.

18. Despite receiving compensation and benefits from Afdent, Coleman did not perform services for Afdent.

19. Jasinski's employment with Afdent ended on or about March 18, 2016.

20. Jasinski nevertheless remained on Afdent's payroll thereafter, at the direction of Nordan, receiving compensation and benefits.

21. Nordan also utilized Afdent funds to pay for personal expenses.

22. Late Spring/early Summer of 2018, Afdent suspected that Nordan was misappropriating Afdent funds.

23. Afdent retained an outside entity to perform an accounting.

24. On June 26, 2018, a preliminary report was issued identifying "questionable expenditures and amounts in excess of One Million Dollars (\$1,000,000.00)." (Integrity Advisory Group, LLC, June 16, 2018 Initial Finds Report attached hereto as Exhibit D.)

25. The report preliminarily determined that:

a. Nordan utilized Afdent funds to furnish the residence at Tonkel Road which both Defendants collectively use at their primary residence, lake cottage, and farm property.

b. Nordan utilized Afdent funds to pay for his personal home and automobile insurance policies.

c. Nordan utilized Afdent funds to pay certain personal credit card balances that were used for personal use.

d. Nordan utilized Afdent funds at Sam's Club for personal items.

e. Nordan utilized Afdent funds to purchase home improvement items at Lowe's Home Improvement.

f. Nordan would utilize Afdent accounts to pay for personal food and travel.

g. In addition, during the course of Nordan's employment, Nordan utilized payroll advances in amounts upwards of One Hundred Thirty Thousand Dollars (\$130,000.00), characterizing them as "Expense Reimbursements."

h. During the course of Nordan's employment, Nordan utilized Afdent business checks in amounts upwards of Three Hundred Thousand Dollars (\$300,000.00), characterizing them as "Expense Reimbursements."

26. Said "Expense Reimbursements" cannot be substantiated as ordinary and necessary business expenses incurred by Afdent.

27. At no time did Afdent authorize Nordan to utilize Afdent funds to pay for personal expenses.

28. Nordan is one of three members of NHS Holdings, LLC ("NHS"), which was created on or about October 9, 2017.

29. NHS sold toothpaste to Afdent at a significant markup.

30. Nordan would purchase toothpaste from another entity at a cost of between Five Dollars (\$5.00) to Nine Dollars (\$9.00) per tube.

31. Nordan then, through NHS Holdings, LLC, would sell the toothpaste to Afdent for Twenty Dollars (\$20.00) to Twenty Five Dollars (\$25.00) per tube.

32. On information and belief, Nordan used Afdent's funds to initially purchase the toothpaste then sold the toothpaste back to Afdent at a profit.

33. At no time did Afdent authorize Nordan's actions through NHS Holdings, LLC.

COUNT I – BREACH OF EMPLOYMENT AGREEMENT BY NORDAN

34. Plaintiff hereby reincorporates Paragraphs 1 through 35 by reference as if fully restated herein.

35. Afdent executed three separate Employment Agreements with Nordan during the time in which Nordan was employed with Afdent as Chief Marketing Officer and General Manager, the same being attached hereto as Exhibits "A," "B," and "C."

36. The Agreements were valid, binding contracts between Nordan and Afdent.

37. Nordan breached his Agreements by converting and/or misappropriating certain funds of Afdent for his own personal use and benefit.

38. Nordan's actions constitute a material breach of his duties owed to Afdent, and thus, a material breach of his Employment Agreements.

39. Nordan further breached his Employment Agreements through his creation of NHS Holdings, LLC.

40. Nordan's actions through NHS Holdings, LLC constitute competing with Afdent and, as such, constitute a breach of the noncompetition provisions of his Employment Agreements.

41. Nordan's actions constitute a material breach of his duties owed to Afdent, and thus, constitute a material breach of his Employment Agreement.

42. Nordan's actions have resulted in Afdent incurring damages due to Nordan's material breach of the contractual relationship between them.

43. Nordan's actions are the direct and proximate cause of Afdent's loss.

WHEREFORE, Plaintiff, David M. Allen DDS & Associates, LLC d/b/a Afdent, hereby respectfully requests judgment in its favor and against Brian C. Nordan for any and all direct, incidental, and/or consequential damages as a result of Brian C. Nordan's actions, for a judgment in its favor disgorging Brian C. Nordan of any and all compensation received by way of his competition against Afdent, for costs of this action, for reasonable attorney fees incurred as a result of this action and for all other relief just and proper in the premises.

COUNT II – BREACH OF FIDUCIARY DUTY BY NORDAN

44. Plaintiff hereby reincorporates Paragraphs 1 through 45 by reference as if fully restated herein.

45. Due to the nature of Nordan's employment with Afdent, Nordan owed Afdent a fiduciary duty of utmost good faith and fair dealing.

46. Specifically, Nordan owed Afdent a Duty of Loyalty and a Duty of Good Faith.

47. Nordan's actions as complained of herein breach said duties.

48. Specifically, Nordan's use of Afdent's funds for his own personal endeavors advances his private interests.

49. Furthermore, Nordan's actions with respect to paying Coleman and Jasinski despite said individuals not performing services for said compensation fails to advance the interests of Afdent.

50. Nordan's misappropriation and/or conversion of Afdent funds violate the law.

51. Nordan's acts through NHS directly competes with the interests of Afdent, utilizes confidential or proprietary information of Afdent's to its detriment, and does not advance the interests of Afdent.

52. Nordan's collective actions as complained of herein constitute a breach of his Duty of Loyalty and Duty of Good Faith owed to Afdent.

53. Because of Nordan's actions, Afdent has incurred damages.

54. Nordan's actions are the direct and proximate cause of Afdent's damages/loss.

WHEREFORE, Plaintiff, David M. Allen DDS & Associates, LLC d/b/a Afdent, hereby respectfully requests judgment in its favor and against Brian C. Nordan for any and all direct, incidental, and/or consequential damages as a result of Brian C. Nordan's actions, for an Order disgorging Brian C. Nordan of any and all compensation received by way of his competition against Afdent, for costs of this action, for reasonable attorney fees

incurred as a result of this action and for all other relief just and proper in the premises.

COUNT III – CONSTRUCTIVE FRAUD AS TO NORDAN

55. Plaintiff hereby reincorporates paragraphs 1 through 56 by reference as if fully restated herein.

56. In addition to his fiduciary duties, Nordan was in a position of trust and confidence with Afdent.

57. Nordan, due to the actions complained of herein, made deceptive material misrepresentations of fact.

58. Specifically, Nordan misrepresented and deceived Afdent by keeping family members on Afdent's payroll, despite said family members not performing services for the benefit of Afdent.

59. Furthermore, Nordan, as more fully described above, misappropriated and/or converted significant funds belonging to Afdent under the guise of Expense Reimbursements, all of which were utilized in furtherance of Nordan's own personal interests.

60. Additionally, Nordan misrepresented to Afdent employees that the sale of NHS product to Afdent and/or its patients at a significant mark-up was authorized.

61. Said deceptive material misrepresentations were relied upon by Afdent and/or its employees, to its detriment.

62. Nordan's actions are the actual and proximate cause of the damages complained of herein.

63. Nordan gained an advantage over Afdent because of his position to the expense and detriment of Afdent.

64. The actions of Nordan as alleged throughout this Complaint are such that Nordan has acted with malice, fraud, gross negligence and oppressiveness which was not the result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence or other human failing, rendering punitive damages appropriate.

WHEREFORE, Plaintiff, David M. Allen DDS & Associates, LLC d/b/a Afdent, hereby respectfully requests judgment in its favor and against Brian C. Nordan for any and all direct, incidental, and/or consequential damages as a result of Brian C. Nordan's actions, treble damages, punitive damages, for costs of this action, for reasonable attorney fees incurred as a result of this action and for all other relief just and proper in the premises.

COUNT IV – UNJUST ENRICHMENT AS TO NORDAN

65. Plaintiff hereby reincorporates paragraphs 1 through 66 by reference as if fully restated herein.

66. During the course of Nordan's employment with Afdent, Afdent conferred certain benefits upon Nordan at the express or implied request of Nordan.

67. Nordan retained said benefit and Nordan knew said benefits were being conferred upon him.

68. Allowing Nordan to retain said benefit would be unjust.

69. Afdent expected, or would expect, repayment of said benefits conferred not otherwise authorized.

WHEREFORE, Plaintiff, David M. Allen DDS & Associates, LLC d/b/a Afdent, hereby respectfully requests judgment in its favor and against Brian C. Nordan for any and all direct, incidental, and/or consequential damages as a result of Brian C. Nordan's actions, for costs of this action, for reasonable attorney fees incurred as a result of this action and for all other relief just and proper in the premises.

COUNT V – UNJUST ENRICHMENT AS TO COLEMAN

70. Plaintiff hereby reincorporates paragraphs 1 through 71 by reference as if fully restated herein.

71. Coleman received pay and benefits without performing services for Afdent to the expense and detriment of Afdent.

72. Coleman knowingly retained said benefit, without rendering any services or work for the benefit of Afdent in consideration of the compensation paid.

73. Allowing Coleman to retain said benefit would be unjust.

74. Coleman's pay without services caused Afdent damage.

WHEREFORE, Plaintiff, David M. Allen DDS & Associates, LLC d/b/a Afdent, hereby respectfully requests judgment in its favor and against Dustin D. Coleman for any and all direct, incidental, and/or consequential damages as a result of Dustin D. Coleman's actions, for costs of this action, for reasonable attorney fees incurred as a result of this action and for all other relief just and proper in the premises.

COUNT VI – FRAUD AS TO NORDAN

75. Plaintiff hereby reincorporates paragraphs 1 through 76 by reference as if fully restated herein.

76. During the course of Nordan's employment, Nordan made certain material misrepresentations of past or existing fact which were untrue.

77. Specifically, Nordan represented to Afdent that purchases made by and through Afdent's business accounts were ordinary and

necessary business expenses that would otherwise entitle Nordan to reimbursement.

78. Furthermore, Nordan represented to Afdent that Coleman and Jasinski were employed by Afdent and were otherwise entitled to compensation and benefits in consideration of said employment.

79. Additionally, Nordan misrepresented to employees of Afdent that transactions with NHS were authorized.

80. Nordan made said material misrepresentations with knowledge of or in reckless ignorance of its falsity.

81. Afdent and/or its employees relied upon Nordan's material misrepresentations to its detriment.

82. Nordan's misrepresentations were the actual and proximate cause of the damages incurred by Afdent complained of herein.

83. The actions of Nordan as alleged throughout this Complaint are such that Nordan has acted with malice, fraud, gross negligence, and oppressiveness which was not the result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing, rendering punitive damages appropriate.

WHEREFORE, Plaintiff, David M. Allen DDS & Associates, LLC d/b/a Afdent, hereby respectfully requests judgment in its favor and against Brian

C. Nordan for any and all direct, incidental, and/or consequential damages as a result of Brian C. Nordan's actions, treble damages, punitive damages, for costs of this action, for reasonable attorney fees incurred as a result of this action and for all other relief just and proper in the premises.

COUNT VII – FRAUD AS TO COLEMAN

84. Plaintiff hereby reincorporates paragraphs 1 through 85 by reference as if fully restated herein.

85. During relevant periods of time as set forth herein, Coleman made certain material misrepresentations of past or existing fact which were untrue.

86. Specifically, between the period of June 12, 2014 and May, 2018, Coleman represented that he was an employee of Afdent entitled to compensation and benefits.

87. Coleman made said material misrepresentations with knowledge of or in reckless ignorance of its falsity.

88. Afdent and/or its employees relied upon Coleman's material misrepresentations to its/their detriment and was damaged thereby.

89. Coleman's misrepresentations were the actual and proximate cause of the damages incurred by Afdent complained of herein.

90. The actions of Coleman as alleged throughout this Complaint are such that Coleman has acted with malice, fraud, gross negligence, and oppressiveness which was not the result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing, rendering punitive damages appropriate.

WHEREFORE, Plaintiff, David M. Allen DDS & Associates, LLC d/b/a Afdent, hereby respectfully requests judgment in its favor and against Dustin D. Coleman for any and all direct, incidental, and/or consequential damages as a result of Dustin D. Coleman's actions, treble damages, punitive damages, for costs of this action, for reasonable attorney fees incurred as a result of this action and for all other relief just and proper in the premises.

COUNT VIII – TORTIOUS CONVERSION AND EMBEZZLEMENT
AS TO NORDAN

91. Plaintiff hereby reincorporates paragraphs 1 through 92 by reference as if fully restated herein.

92. Through the actions of Nordan, Nordan has misappropriated the funds of Afdent to Nordan's own use and benefit.

93. Nordan has been exercising control over the property and funds of Afdent in exclusion and defiance of the rights of Afdent and is further withholding said funds from the possession of Afdent.

94. The actions of Nordan, as set forth and alleged throughout this Complaint, are such that Nordan acted with malice, fraud, gross negligence, and oppressiveness which was not the result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing, rendering punitive damages appropriate.

WHEREFORE, Plaintiff, David M. Allen DDS & Associates, LLC d/b/a Afdent, hereby respectfully requests judgment in its favor and against Brian C. Nordan for any and all direct, incidental, and/or consequential damages arising out of Brian C. Nordan's actions, treble damages, punitive damages, for costs of this action, for reasonable attorney fees incurred as a result of this action, any and all damages as contemplated under Indiana Code §34-24-3-1, and for any and all other relief that this Court may deem to be just and proper in the premises.

COUNT IX – TORTIOUS CONVERSION AS TO COLEMAN

95. Plaintiff hereby reincorporates paragraphs 1 through 96 by reference as if fully restated herein.

96. Through the actions of Coleman, Coleman has misappropriated the funds of Afdent to Coleman's own use and benefit.

97. Coleman has been exercising control over the property and funds of Afdent in exclusion and defiance of the rights of Afdent and is further withholding said funds from the possession of Afdent.

98. The actions of Coleman, as set forth and alleged throughout this Complaint, are such that Coleman acted with malice, fraud, gross negligence, and oppressiveness which was not the result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing, rendering punitive damages appropriate.

WHEREFORE, Plaintiff, David M. Allen DDS & Associates, LLC d/b/a Afdent, hereby respectfully requests judgment in its favor and against Dustin D. Coleman for any and all direct, incidental, and/or consequential damages arising out of Dustin D. Coleman's actions, treble damages, punitive damages, for costs of this action, for reasonable attorney fees incurred as a result of this action, any and all damages as contemplated under Indiana Code §34-24-3-1 and for any and all other relief that this Court may deem to be just and proper in the premises.

COUNT X – STATUTORY THEFT AND CONVERSION AS TO NORDAN

99. Plaintiff hereby reincorporates paragraphs 1 through 100 by reference as if fully restated herein.

100. As set forth and alleged throughout this Complaint, Nordan knowingly and intentionally exerted unauthorized control over the property and funds of Afdent with the intent to deprive Afdent of its use.

101. The actions of Nordan, as set forth and alleged throughout the Complaint, constitute violations of Indiana Code §§ 35-43-4-2, 35-43-4-2.5, and 35-43-4-3.

102. Pursuant to Indiana Code § 34-24-3-1, by reason of Nordan's violation of Indiana Code §§ 35-43-4-2, 35-43-4-2.5, and 35-43-4-3, Nordan is liable in a civil suit for actual damages, as well as treble damages, reasonable attorney's fees, and any other cost associated with this action.

103. The actions of Nordan, as set forth and alleged throughout this Complaint, are such that Nordan acted with malice, fraud, gross negligence, and oppressiveness which was not the result of mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing, rendering punitive damages appropriate.

WHEREFORE, Plaintiff, David M. Allen DDS & Associates, LLC d/b/a Afdent, hereby respectfully requests judgment in its favor and against Brian C. Nordan for any and all direct, incidental, and/or consequential damages arising out of Brian C. Nordan's actions, treble damages, punitive damages, for costs of this action, for reasonable attorney fees incurred as a

result of this action, any and all damages as contemplated under Indiana Code §34-24-3-1 and for any and all other relief that this Court may deem to be just and proper in the premises.

COUNT XI – STATUTORY THEFT AND CONVERSION
AS TO COLEMAN

104. Plaintiff hereby reincorporates paragraphs 1 through 105 by reference as if fully restated herein.

105. As set forth and alleged throughout this Complaint, Coleman knowingly and intentionally exerted unauthorized control over the property and funds of Afdent with the intent to deprive Afdent of its use.

106. The actions of Coleman, as set forth and alleged throughout the Complaint, constitute violations of Indiana Code §§ 35-43-4-2, 35-43-4-2.5, and 35-43-4-3.

107. Pursuant to Indiana Code § 34-24-3-1, by reason of Coleman's violation of Indiana Code §§ 35-43-4-2, 35-43-4-2.5, and 35-43-4-3, Coleman is liable in a civil suit for actual damages, as well as treble damages, reasonable attorney's fees, and any other cost associated with this action.

108. The actions of Coleman, as set forth and alleged throughout this Complaint, are such that Coleman acted with malice, fraud, gross negligence, and oppressiveness which was not the result of mistake of fact

or law, honest error or judgment, overzealousness, mere negligence, or other human failing, rendering punitive damages appropriate.

WHEREFORE, Plaintiff, David M. Allen DDS & Associates, LLC d/b/a Afdent, hereby respectfully requests judgment in its favor and against Dustin D. Coleman for any and all direct, incidental, and/or consequential damages arising out of Dustin D. Coleman's actions, treble damages, punitive damages, for costs of this action, for reasonable attorney fees incurred as a result of this action, any and all damages as contemplated under Indiana Code §34-24-3-1, and for any and all other relief that this Court may deem to be just and proper in the premises.

I affirm under the penalties for perjury that the foregoing is true and accurate to the best of my knowledge and belief based on my personal knowledge.

Dr. David M. Allen, DDS

Respectfully submitted,

Burt, Blee, Dixon, Sutton & Bloom, LLP

/s/ Shane C. Mulholland

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